
(2015) 11 UK CK 0001

In the Uttarakhand High Court

Case No : W.P. (S/S) Nos. 796, 793, 795 and 797 of 2015

Yunis and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Citation : (2016) 148 FLR 535 : (2015) 4 LLJ 745

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

**Advocate : C.K. Sharma and Farida Siddique, Advocates, for the Appellant;
Vikas Pandey, Brief Holder, T.A. Khan Advocate, Aditya Kumar and Arya,
for the Respondent**

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—All these writ petitions, which are before this Court, arise out of the common issue, therefore, all these petitions are being heard and decided by this common order. The petitioners are the workmen presently working in a Cooperative Sugar Factory in the State of Uttarakhand. Admittedly they are working on daily wage basis, and are getting the minimum of pay scale as given on the recommendation of the Third Wage Board. They now claim a benefit of a Government Order dated 04.01.2006, which has been passed by the State Government under powers vested with the Government under Section 3(b) of the Uttar Pradesh Industrial Disputes Act. The said provision reads as under:

"3. Power to prevent strikes, lock-outs, etc.-If, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision.

(a)

(b) for requiring employers, workmen or both to observe for such period, as may

be specified in the order, such terms and conditions of employment as may be determined in accordance with the order."

2. The above provision has been incorporated under the Act for smooth and peaceful functioning of an industry.

3. By means of certain orders, over and above the wages, certain emoluments have been fixed as an interim relief to the tune of Rs. 700/- to all the workmen. This is being denied to the petitioners by the Management of the Sugar Factory on the ground that the Government Order dated 04.01.2006 is not applicable in the case of the petitioners, as they are only daily rated workers and the Government Order, by which the benefit has been taken by the petitioners specifically states for certain categories of workers on which the order is not applicable, one of them being such workers on whom the recommendations of the Third Wage Board are not applicable.

4. Learned counsel for the petitioners, on the other hand would argue that language of the Government Order dated 04.01.2006 clearly says that it is applicable to "workman" as defined under the definition of under Uttar Pradesh Industrial Disputes Act as well as to "worker" who is defined under the definition of Factories Act. Under both the definitions the present petitioners are covered. The definition of "Workman" in the U.P. Industrial Disputes Act reads as under:

""Workman" means any person (including apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) who is subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

5. The definition of "Worker" in the Factories Act reads as under:

"worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning

any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union."

6. It has further been argued that both the Industrial Disputes Act as well as the Factories Act do not distinguish between a permanent, casual, contractual or daily rated worker. In fact the definition of a worker also including an "apprentice", who is not even an regularly appointed in a factory or an industry. The petitioners are unskilled workers in an industry, and therefore are covered under the said definition. As far as the objection of the learned Senior counsel for the respondent Sri T.A. Khan that such employees who are not covered under the recommendation of the Third Wage Board is concerned, this is denied by the petitioner and has been submitted that they are getting wages on the basis of the recommendation of the Third Wage Board.

7. Mr. Vikas Pande, learned Brief Holder for the State specifically stated in the counter affidavit that the order dated 04.01.2006 is applicable in the case of the petitioners, who are working in the Cooperative Sugar Factory. It has further been argued that all workers, who are working in other Sugar Factories such as private and Government lactones are getting the benefit of the Government Order dated 04.01.2006, and petitioners are since working in a cooperative sugar factory are being denied the same benefits, which is not just.

8. Admittedly the order from which the benefit is being sought by the petitioners is an order passed by the Government under Section 3(b) of U.P. Industrial Disputes Act, 1947. The relevant provision of Section 3 is quoted below for ready reference:

"3. Power to prevent strikes, lock-outs, etc.-If, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintenance employment, it may, by general or special order, make provision:

(a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c)

(d)

(e)

(f)

(g)

Provided that no order made under clause (b)-

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;"

9. The very language of the above provision shows that these orders are passed by the State Government "for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment".

10. In view of the above, the writ petitions are allowed. A mandamus is hereby issued to the respondents to make the payment of revised pay scale to the petitioners in pursuance of the Government Order dated 04.01.2006. However, as far as the arrears are concerned, since it will also entail an immediate financial burden on the sugar factory, the same may be given in reasonable installments to the petitioners.